Supreme Court, U.S.
FILED

NO.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

CHRISTOPHER R. WOJCIECHOWSKI

Petitioner

V.

WALT DISNEY CONCERT HALL No. 1 et. al.,

Respondents

On Petition For Writ of Certiorari

To The Ninth Circuit Court of Appeals

Docket No. 97-16195-96-97 [Related Case Docket No. 97-56654]

PETITION FOR WRIT OF CERTIORARI

WALT DISNEY CONCERT HALL NO.1; a Calif. not for Profit Corp. LILLIAN DISNEY; DIANE D. MILLER, an individual; DIANE D. MILLER; RONALD E. GOTHER, in their capacity as executors of The Estate of Sharon D. lund; THE ESTATE of SHARON D. LUND ; RETLAW ENTERPRISES, INC .a Calif. Corp.; CANYON OAKS ESTATES, a Calif. Limited .Partnership ; TOPANGA OAKS INC., a Calif. Corp.; ROBERT L. WILSON, President of TOPANGA OAKS INC.; ROBERT L. WILSON, an individual ; GIBSON DUNN & CRUTCHER a Partnership, including Professional Corporations, and in it's previous capacity as a Law Firm; RONALD E. GOTHER, an individual; BENNETT L. SILVERMAN; LAUREL BALLARD BRYAN; CHARLES S. BATTLES, JR.; JANE LINDSAY WINGFIELD; RESPONDENTS

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QUESTION:

This is a Petition for a writ of certiorari to review a pending case in a United States court of appeals, before judgment is entered or in the alternative after mandate issues. The Case and Companion Case are of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination by this Court under 28 USC Sect. 2101(e). This question of imperative importance is:

1. The Companion Case Opinion was used to interfere with Petitioner's substantial due process rights to seek relief in three different instances; (See Companion Case)

(a) Under Rule 60(b) Motion from fraud on Bankruptcy Court, filed in Ninth Circuit Court of Appeals;

(b) Under this Case, as an independent action under Rule 60(b) filed in U.S. District Court 12-6-97;

(c) Under relief sought in RICO case, filed in U.S. District Court 11-16-98 (during the course of Appeal, at Ninth Circuit Court of Appeals);

Can the Ninth Circuit Court of Appeals Opinion, *made without complete judicial inquiry* into the merits of the arguments, stand in conflict with relevant important decisions of the Supreme Court on matters of Fraud on Court, in conflict with other Circuits, who's interpretation of FRCivP. Rule 60(b) has been upheld by the Supreme Court?

Another question is:

2. Should an Opinion which mixes up Appellees and Appellants beyond any reasonable recognition as to what the Appellate Panel intended, is beyond total comprehension, by a reasonable prudent adult, and to phrase it mildly is "botched", be allowed to stand?

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JURISDICTIONAL STATEMENT

Questions raised pertain to Ninth Circuit Court of Appeals ("9th Cir. Crt. App.") which; *departed so far from accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power*, pursuant to, Part III Rule 10(a), Rules of the Supreme Court of the United States. Jurisdiction is found in; 28 USC 1254 for Writ of Certiorari on matters before or after rendition of Judgment. Petitioner has Moved 9th Cir. Crt. App. for a Stay of Mandate, in this & Companion Cases, (Petition for Writ of Certiorari was filed on 5-28-99 "Wojciechowski v. Montevideo Partnership"), and has asked Chief Judge Procter Hug, Jr. to look into allegations made against Appellate Commissioner, Peter L. Shaw.[1]/

[1]/ **Footnote: Peter L. Shaw, Appellate Commissioner at Ninth Circuit had allegedly been a participant, in a pattern of Racketeering Acts with the "new parties" in the expanded field created by Appellate Opinion in Companion Case. This Case was decided at the same time. Shaw's acts, in conspiracy with those parties, gave rise to RICO Action. Such acts have apparently become a prejudicial factor in both Opinion's. On 6-11-98, Shaw chose to show his hand by dismissing a Rule 60(b) Motion for Relief, without jurisdiction. Shaw was "caught in the act" and became a named Defendant in the RICO Action. Warned, Shaw retaliated, instead of stopping acts of transparent corruption. The function of this Appellate Court, has been compromised. On the merits, the briefing evidence was clear; underlying Bankruptcy Court Order of July 1, 1992 was already void before alleged contempt took place. (See Petition in Companion Case pg. 27 to end). The Rule 60(b) Motion for Relief, which Shaw wrongfully dismissed, would have vacated that Order. This Case was filed as an Independent Action pursuant to Rule 60(b) to vacate the above Order. Klapprott v. United States, 335 US. 601, 699 Ct. 384, 93L Ed (1949), decision did not have to vest 9th Cir. Crt. App. with the power to adjudicate Rule 60(b) Motions. Had 9th Cir. Crt. App. not been corrupted, the Court's inherent power to grant relief, was certainly available. Klapprott only supports that contention:**

"Any Court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit, - etc"

Nothing could be clearer and more applicable than that. The 9th Cir. Crt. App., corrupted by Shaw, failed in it's duty to provide "*substantial justice*" by not Granting Relief sought in Rule 60(b) Motion laid before it.

In addition, pursuant to Part III Rule 10(c), the 9th Cir. Crt. App., *has decided an important question of federal law in a way that it conflicts with relevant decisions of this Court.*

The date of Appellate Panel Memorandum Opinion was 3/31/99. Order Denying the Petition for Rehearing and for Rehearing En Banc was filed 5/1/99. Motion for Stay of Mandate was filed in a timely manner, on 5/19/99, in this Case and in Companion Case. Petition for Writ of Certiorari in Companion Case, was filed in the Supreme Court on 5/28/99.

STATEMENT OF THE CASE

Introduction: The essence of the matters, laid here before this Court, is deprivation of Petitioner's guarantees found in the Seventh and Fourteenth Amendments. Petitioner has been deprived of the following due process:

A. Petitioner suffered actual damages in property and monies, in the aggregate sum of $ 150,561,839.50. That value was taken without due process, without a jury trial.

B. The above damages occurred because Petitioner was deprived of a lawful distribution of partnership assets, in violation of U.S. Internal Revenue Code and State of California Tax Code.

C. U.S. Bankruptcy Court dissolved the Partnership, acknowledging it lacked jurisdiction. In so doing, the judge failed to distribute the assets of the Partnership according to the ownership interests of the two partners.

D. Petitioner filed the underlying Case in Monterey Calif. Superior Court on 6-30-95, well within the minimum 3

year statute of limitations from the 7/1/92 Order.[2/] On 12-6-96, Petitioner removed the Case to U.S. District Court, as an independent action to vacate that Order.

E. Since then, Petitioner has been deprived of Constitutional due process rights to recover his losses as shown here and in Companion Case.

F. Such deprivation gave rise to RICO action, filed on 11-16-98, in U.S. District Court, Northern District of California Case No. CV-98 21139 RMW(EAI).

G. Panicked by effect of RICO's treble damages on their Racketeering activity, Respondents, enlisted the Appellate Commissioner at the 9th Cir. Crt. App., to cover up their wrong doing, causing additional deprivation of Petitioner's due process rights, and compromising the integrity of that Court.

Petitioner is seeking relief for a jury trial, long overdue. Petitioner is seeking relief from alleged criminal acts of Respondents and opposing attorney's in RICO action. All of which have been virtually, illegally dismissed without due process by Appellate Panel's "expanded field" Opinion in

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2/ FOOTNOTE: Judgment is void, Bankruptcy Court lacked jurisdiction to dissolve a Calif. Partnership, it usurped the power of a state court, and therefore, judgment Order is subject to relief under FRCP 60(b)(4). [Hoult v. Hoult (1995, CA1 Mass) 57 F3d 1,41 Fed Rules Evid Ser.783] Holds, only if court lacked jurisdiction or if court's action amounts to plain usurpation of power constituting violation of due process.There is no time limit on attack on judgment as void; one-year limit applicable to some Rule 60(b) motions is expressly inapplicable to Rule 60(b)(4) motion, and even requirement that motion be made within reasonable time cannot be enforced with regard to this class of motion. [Briley v. Hidalgo (1993, CA 5 La) 981 F3d 246];FRCP 60(b)(4)], which provides relief from judgments, is not subject to any time limitation. [Hall v. Commissioner (1994,CA10) 30 F3d 1304,CCH Unemployment Ins Rep 14044B, 94-2 USTC 50392,94 TNT 145-21]; [New York Life Ins. Co. v. Brown (1996, CA5 La) 84 F3d 137].

Companion Case. That act constitutes a continuing pattern of obstruction of justice, alleged in RICO action. Illegal results have been achieved during the course of this Case on Appeal and the same in Companion Case. The existance of Supreme Court's *supervisory power*, under it's Rule 10(a) is Petitioner's only recourse.

Petitioner appears before this Supreme Court of last resort, because he is in want of relief found in Constitutional guarantees. Now such relief can only be provided by this Court.

HISTORICAL BACKGROUND

The underlying Case in chief at the 9th Cir. Crt. App., is Case is No.97-16195, the Companion Case is Case No. 97-56654. Both were decided at the same time. These two Cases stem from Bankruptcy fraud, on court and on Petitioner, practiced by attorney's on Central District of California, Bankruptcy Court, Case No. LA 89-27014WL (1989-1992).

(For balance of Historical Background see Companion Case, "Wojciechowski v. Montevideo Partnership", filed with the Supreme Court on May 28, 1999.)

ARGUMENT AS TO FIRST QUESTION:

Petitioner made three "key Motions" to the 9th Cir. Crt. App. in this case and Companion Case, directly and proximately affecting the outcome of this Case: (1.) Emergency Motion to Disqualify GD&C immediately, for reasons stated above; (2.) Motion for Rule 60(b) Relief to enforce only the 1992 Court Ordered distribution of $950,000 and (3.) Motion to Strike Appellees Answering Brief and accompanying Request for Judicial Notice, for lack of signature and prejudicial false pleadings. None of the above, nor any of the other Motions Petitioner made during the briefing process, were considered.

Corrupted, the Appellate Commissioner at 9th Cir., Peter L. Shaw, decided to overreach his authority and dismissed Petitioner's Motions. It is evident that dismissals happened only because GD&C was not disqualified, as required by law. Artificially, GD&C were kept in place for 12 month, by the Commissioner, thus it was able to continually corrupt the Court. Finally, after the RICO case was filed and served, GD&C's

clients, some of whom are Respondents here, hired independent counsel to defend them in the RICO action. Petitioner believes GD&C must be replaced in this Case and the Companion Case before the Supreme Court. In the event Respondents do not replace GD&C, the Supreme Court must disqualify GD&C and it's attorney's from further representation of anyone but themselves. Excerpts of Petitioners Motion to Supplement Emergency Motion to Disqualify Counsel filed in the 9th. Cir. Crt. App., have been provide in the Appendix attached hereto, for the purpose of disqualification by the Supreme Court. There is sufficient evidence presented, which is corroborated in the record of this appeal, to disqualify GD&C forthwith.

The effect of the conflict of interest, continued the corruption up to and including the 9th Cir. Crt. App. It was a malicious, premeditated obstruction of justice. In the Bankruptcy Court, in 1992, it was an unlawful taking of Petitioner's property and invested capital, without paying full market value. The Partners were not bankrupt. This scam was accomplished, and continues in conspiracy with others, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), 18 USC Sect's. 1961 et. seq. The following are excerpts from the transcript of April 2, 1992 Hearing before the Bankruptcy Court, at which time Judge Lasarow, corrupted by GD&C attorney's, approved an expired "Letter of Intent" as a settlement agreement, dissolving the partnership, without jurisdiction to do so:

Judge Lasarow, on pg. 1, ln.15-19 says:

" Now, I noticed that there was a question concerning the jurisdiction of this Court, and I had expressed earlier that when it came to a final disillusion of a partnership, that I would expect that that would be done in the Superior Court not here."

Comment: Judge Lasarow had a problem distinguishing between the interests of the two owners of the debtor partnership, over which he knew he had no jurisdiction and the estate of the Debtor, over which he had jurisdiction. The

bankruptcy claims on the agenda, which he had to deal with, he set aside, in error. He knew what had to be done legally, but, he chose not to accommodate the law. He accommodated GD&C attorneys, instead. Charles S. Battles, Jr. ("Battles") and Bennett L. Silverman knew dissolving the Partnership was illegal in U.S. Bankruptcy Court. They knew it was a fraud. Lasarow moved the dissolution from last to the first item on the agenda. He did so acknowledging he had no such jurisdiction. Once he finished with dissolving the Partnership all of Petitioner's claims were moot. The following excerpts show how that legal error was made, so that the Supreme Court vacates the subsequent Order of July 1, 1992 (a copy of that Order is attached to Appendix herein for ease of reference).

After a discussion of and resolution of the fact that Petitioner was appearing as a Pro Se litigant, rightful representing bankruptcy claims assigned to him. Petitioner made the following statement on pg.4, starting with ln. 21;

"Your Honor, before Mr. Battles starts, I'd like to address the Court if I may, on the issue of jurisdiction. We feel that this goes way beyond the claims. The net result of Ms. Lund's motions that are before you today, will eliminate all of my ownership interest and assets in this partnership, and this is a matter that takes away property, if it were allowed to be adjudicated that way. It's a matter for a jury trial to decide.

I'm here by myself to defend my property rights, and I don't think this is a proper place to take people's property away on this kind of a motion, and that's what's going on here."

Then on ln. 17, Battles, materially misleads the court, he lies about non-existent provisions contained in the expired "Letter of Intent". Mr. Battles:

"We are here to enforce the settlement agreement. A settlement agreement in the form of a letter of intent. The settlement agreement effects a total divorce, that's language used by the parties, in all of their dealings with one another. It includes the claims

filed in this Court, it includes the administrative claims, it does include the partnership interest, it includes secured and unsecured claims. And that's because the only way a settlement could be reached."

Comment: That last sentence is a bald face lie. That was a fraud on the Court for two reasons; (1) The letter of intent he referred to was no longer effective, it died of it's own self extinguishing provisions. (2) There were specific provision in the Montevideo Partnership Agreement as to how the Partnership was to be dissolved. By making the false statements, Battles materially mislead the Court, causing fraud on Court in violation of FRCivP. Rule 60(b). He also violated Title 18 USC Sect. 1503, and he has continued to willfully obstruct justice, for personal gain, for the past seven years, including the corrupt deliberations at the 9th Cir. Crt. App.

On pg. 6, ln. 7 Battles continues his material misrepresentation of the facts:

"At long last, with great difficulty, the parties reached settlement agreement. And under that settlement agreement, Ms. Lund paid to Mr. Wojciechowski $150,000. The settlement agreement said that it would be documented in a final form kind of documentation, and that didn't happen, but it didn't happen because Mr. Wojciechowski absolutely refused to deal with the proposed language and indeed repudiated the settlement agreement."

Comment: Battles lied again. To get to the truth on the facts he lied about, would take at least a 6 hour examination of expert witnesses, and documents, in front of a jury. Battles proved nothing by testifying as he did, except that the scam Petitioner now knows took place, through Racketeering activity, was in full swing. The object being, to take Petitioner's property and money without paying him his fair share of the Partnership's value, based on Petitioner's 77.44% ownership interest.

Battles continues on ln. 15:

"According to Mr. Wojciechowski there never

was a settlement, it was just a letter of intent, but he took the $150,000, and he dismissed his appeals. Then he says it was a bifurcated settlement agreement, and all Ms. Lund got for her $150,000 was dismissal of the appeals and delivery of some documents to the partnership. But having made it impossible to finalize the documentation of the settlement Wojciechowski then turned around and caused the dismissal of the appeals to be vacated on the ground that the settlement documentation had not been concluded. He can't have it both ways. But their —"

On pg. 7, ln. 1, Mr. Wojciechowski:

"Your honor, I object to this kind of testimony."

The Court: ***"NO, let Mr. Battles talk. You'll have your chance to - - just make notations."***

Mr. Wojciechowski: ***"He's mischaracterizing the agreement, your Honor."***

The Court: ***"Mr. Wojciechowski, just make notations of what it is you want to say and you'll get an opportunity to talk. Go ahead. Go ahead, Mr. Battles."***

Comment: There isn't enough space to quote the complete transcript, complete transcript is available on request from Petitioner.

Judge Lasarow confirmation of the "Letter of Intent", which had expired on it's own terms, and was no longer in effect, was a legal error, which has never been reversed so far. The "Letter of Intent", when it was in effect, was an attempt at a "global settlement" of differences between Petitioner's only partner, Sharon D. Lund ("Sharon") & Petitioner. However, no definitive agreement was reached by the specified date, specifically permitting litigation to continue. The "Letter of Intent" terminated on 1-15-92. The parties agreed to that provision, which allowed for resumption of litigation after that date. Petitioner, and all courts, including the Bankruptcy Court, was bound by that agreement between the parties. Lasarow, changed that provision, in so doing he abrogated Petitioner's rights to due process guaranteed by the Fourteenth

Amendment. Petitioner was entitled to dissolve a Calif. Limited Partnership in the court of proper jurisdiction, a State Court where assets are distributed, just like a divorce decree distributes assets of married couples. (See "Letter of Intent" provided for convenience of reference in Appendix attached to this Petition).

Respondents hold that the Bankruptcy enforced the "Letter of Intent", that is a fraud on Court. No settlement was reached by 1-15-92. After that date, litigation was permitted, not prohibited. (See First Amended RICO Complaint, Fifth Cause of Action).;

" Lund and Claimants agree to put a hold on all litigation matters pending execution of the definitive agreement to include the taking of depositions, the production of documents, etc., but if no agreement has been reached by January 15, 1992, litigation matters may proceed by both parties."

The above language is a permissive agreement. The terms are crystal clear and were inserted for the benefit of both parties. Upon the terms of that agreement contempt sought in Companion Case was a fraud, and impossible to obtain without corruption of Judge Lasarow's Court, Judge Ashland's Court, Judge Rafeedies Court and the 9th. Cir. Crt. App. Without the cloud of contempt this Case must go to a jury forthwith. Justice was denied Petitioner, now a RICO jury will attempt to grant Petitioner a modicum of his much deserved recovery.

The agreement between the parties continues para. C (1);

"C. condition to closing - 1. execution and delivery by all parties of a definitive agreement in form acceptable to Lund and claimants, on or before January 15, 1992."

Such an event did not occur.

" C. (5) time is of the essence of this agreement."

After the date certain, 1/15/92, there was no agreement except for part A. After that date the sole function of the "Letter of Intent" was to compensate Petitioner $150,000 for delivering

to COE certain documents, which were owned by Petitioner. That was accomplished and the consideration was paid. Beyond that, there was no agreement to enforce. The 7/1/92 Order, upon which assertions of contempt are made, was a malicious, premeditated fraud and it is void, no matter which argument is used. (see Para. 102 - 111 starting on pg. 32 of First Amended RICO Complaint attached to Appellants Petition for Rehearing filed 4-13-99) or (See pg. 27 through to the end of Petition in Companion Case).

Petitioner directs the Court's attention back to the transcript of the 4-2-92 hearing. On pg. 26, ln. 20 Petitioner said:

" You know I'm the 77 percent owner in that partnership. I'd like to have a partnership attorney representing the partnership right now, because I think if he were here he'd be representing my interests as well as the 22 percent interests. And that's another reason why this hearing should not go on. We don't have counsel here representing the partnership. This is a fight between Ms. Lund, and myself, and my interests. And it doesn't belong in this Court. It has nothing to do with bankruptcy. And if Your Honor —"

THE COURT: ***Well, if it has nothing to do with bankruptcy then you have to -- you have no -- you have no right to ask for administrative claims -- for payment of administrative claims.***

Comment: That is an erroneous Opinion, the Judge was totally confused.

MR. WOJCIECHOWSKI: ***That's a different matter. We're talking about the letter of intent now, I thought. I mean, if we're -- what are doing right now. Are we doing the letter of intent or the administrative claims, because the administrative claims I'd like to handle first anyway.***

THE COURT: ***Well, we're questioning jurisdiction, and I'm telling you we're not talking about administrative claims per se right now, but you***

questioned jurisdiction, and on one hand you're saying Court determine the administrative claims and get us paid, and on the other hand you're saying, Court you have no jurisdiction.

MR. WOJCIECHOWSKI: ***Your Honor, I don't mean to be argumentative, I'm just stating an obvious fact that Ms. Lund as a general partner, has a fiduciary responsibility to the other partners in this partnership, and mainly the 77.44 percent partner which is me to hire an attorney to represent the partnership in these proceedings. And she has not done that.***

Mr. Janosik who was acting in that capacity before the plan was confirmed, filed a motion to be excused, and that motion was denied for some reason. He hasn't done anything for six months that I know of in this case, and we need an attorney if we're going to proceed on this matter. I'd like to have the services of an attorney, and she should be paying for it as general partner. That's her fiduciary duty. And I don't have that. So, I'm here appearing before you in pro per because I don't have the right to have an attorney, which I'm supposed to have under your confirmed plan, you confirmed in August and we don't have anything here, so what is this.

THE COURT: ***You have the right to have an attorney and unfortunately your brother is ill and I'm sorry.***

Comment: Petitioner's brother was an attorney, he is now retired. At the time in question Petitioner's brother was involved in the negotiations after the Letter of Intent was signed . He tried to come together with Jane Lindsay Wingfield of GD&C on a "definitive agreement". She refused to negotiate such an agreement. Evidence at trial and Petitioner's brother's testimony will show that fact.

MR. WOJCIECHOWSKI: ***I'm talking about a partnership attorney, your Honor. One for the partnership for the debtor. There's no debtor's***

attorney here at this hearing.

Comment: That fact alone, was fraud on the Court. A 77.44% ownership worth $70 + million dollars in a California Partnership is about to change hands illegally and there is no partnership attorney. That fact alone voided the subsequent Order emanating from this absurd, premeditated, malicious fraudulent, third world deliberation, by a United States Federal Judge.

The truth is, Debtor Partnership attorneys were there. They were in disguise, posing as Lund's attorney's. GD&C was the firm representing the Debtor Partnership and in conflict per se with Petitioner's 77.44% interest which they managed to steal with the assistance of a federal judge. (See Motion to Supplement Emergency Motion to Disqualify Counsel in Appendix to this Petition).

Skipping down to pg. 57, ln. 5;

MR. WOJCIECHOWSKI: ***Your, Honor, I'd like to ask Ms. Lund one more question.***

THE COURT: ***All right.***

BY MR. WOJCIECHOWSKI:

Q. Ms. Lund, do you have any documents that would show that we have ever reached a global final settlement, where you're purchasing 77 percent interest of Montevideo Country Club, Inc., and you're paying the notes that are due and payable on secured property that are worth of $17 million right now, and all the other claims?

MR. BATTLES: ***Your Honor, that's argumentative. She already said this is the agreement –***

Comment: Battles is materially misleading the Court causing corruption of the judges independent opinion by lying that the Letter of Intent is in effect, when it is expired and cannot be enforced.

THE COURT: ***Well –***

MR. BATTLES: ***– the letter of intent.***

THE COURT: ***– I suppose he's asking if she has any other documents.***

MR. BATTLES: ***Okay.***

THE COURT: ***Any documents other than have been presented to us.***

MR.BATTLES: ***Okay.***

THE WITNESS: ***No.***

THE COURT: ***Are you aware of any documents –***

THE WITNESS: ***No.***

THE COURT: ***– other than what we have here.***

MR. WOJCIECHOWSKI: ***None that I have –***

THE WITNESS: ***None that have been signed by both of us.***

MR. WOJCIECHOWSKI: ***None that I've signed and you've signed together.***

THE COURT: ***Now, wait a minute.***

THE WITNESS: ***None that I've signed.***

THE COURT: ***is the question, is she aware of any – of any documents relating to the transfer –***

MR. WOJCIECHOWSKI: ***Of ownership.***

THE COURT: ***– of ownership other that what we have here?***

Comment: Mrs. Lund admitted that no "definitive agreement" was ever reached, as required by the Letter of Intent. That is an admission there is no "settlement agreement" to enforce. The July 1, 1992 settlement Ordered by the Court is, therefore, a baseless document, it is a fraud to have attempted it's enforcement, and the Order is void.

Starting on Page 59 thru 64...

MR. WOJCIECHOWSKI: ***Now, is it my turn to put on my part of this objection, Your Honor? Because Mr. Battles sat down before.***

THE COURT: ***Yes, go ahead.***

MR. BATTLES: ***Yes, I have concluded my opening argument.***

MR. WOJCIECHOWSKI: ***Thank You, Your Honor. Your Honor, the letter of intent, which is why we're here, is not a complete agreement. It does not have any words in it that say purchase and sell, it has no words***

in it that say Ms. Lund is purchasing the 77 percent ownership of Montevideo Country Club, Inc.

It has no words in it that says, the notes are being handled in any manner whatsoever, they're not being discharged, they're not being paid for, they're not being done away with at all. It just says that on page three, that the -- I'm sorry I can't find it, but it says to the effect that the trust deeds will be dismissed somehow, but it has nothing to do with notes.

The notes are what's owed on the property, and what's against the property, and they are the instruments that have to be dispensed with. This agreement does not dispense with those notes. No where is the word notes present in this agreement, Yet the other agreement that I was just questioning Ms. Lund about, the settlement agreement, which was not signed, and I didn't comment on it because I didn't get it until January 30th, Your Honor.

It was supposed to have been signed and delivered before January 15th, according to the letter of intent. I did not get it until January 30th, and I couldn't comment on it. So Mr. Battles' who's arguing that I didn't comment on it, that's the reason why I can't comment on something I don't have.

And it was -- after I got it, it was totally dissimilar to the letter of intent. It had notes in there, it had my withdrawing of my partnership interests, which this letter of intent does not have. It had a lot of things in there that were contrary to the intent of the parties when they signed the letter of intent. And it was my understanding that the letter of intent covered only the unsecured claims as it says, they're claims and it's between the Claimants and Lund.

It doesn't say anything about partnership, ownership, selling that, this is a registered partnership with the Security and Exchange Commission, Your Honor, and the tax ramifications of such a letter of

intent would be horrendous. It would never be unraveled, and all these things have to be spelled out. If you're going to buy something, you better tell the person that you're buying it from what it is and what they're going to pay you for it. This does not say that, it's a confusing mess.

And that's why we're here, Your Honor, we're objecting to it not because it didn't cover the entire dispute between the parties, it didn't even approach to cover it. It's ambiguous, it's not an agreement.

The conditions of closing that Ms. Lund read into the record a while ago are clear. Certain things have to happen by January 15th there has to be an agreement signed by both parties, otherwise we can litigate any matters, proceed with -- you know discovery, and appeals are certainly defined as litigation. If they're not, then I don't know what they mean.

So, January – after January 15th past, we found there was no agreement, Ms. Lund did not want to continue, she did not present this agreement to us. You know, specific performance is something that has to be addressed here, Your Honor. The party that was suppose to prepare this final agreement the one that has been signed, the settlement agreement, never prepared it in a timely fashion. There's a time of the essence clause in this agreement, which I understand means that people better perform on time, otherwise the agreement's over, and that's what happened here. That's why we're here.

We're objecting to the fact that the letter of intent has been terminated by its own terms on January 15th for lack of performance by Ms. Lund. And further, there was no execution or delivery of any definitive agreement in the form acceptable to anybody before January 15th. It was delivered on January 30th, and it was not acceptable then, because nobody from Ms. Lund's office, negotiated the terms of that final

agreement with my counsel.

There were two long phone calls, my former attorney has given testimony on that in his declaration -

MR. BATTLES: ***I object, Your Honor, there is no declaration by his former attorney.***

MR. WOJCIECHOWSKI: ***Your Honor, I'm sorry, we were going to file them today because of his illness and I have one here for the Court.***

MR. BATTLES: ***I object to that, Your Honor.***

MR. WOJCIECHOWSKI: ***Mr. Battles can have a copy too.***

MR. BATTLES: ***That's plainly late filed.***

(Pause)

MR. BATTLES: ***Had it been properly filed and I think our objections may have covered it anyway, the bulk of what is stated in the incorporated part of the points and authorities, plainly lacks foundation, because the now proposed declarant didn't sign the agreement and didn't negotiate the agreement. So, it's not admissible even if he had purported to file a declaration. He didn't even purport to file a declaration, and signing it under penalty of perjury when there's no foundation and can't be foundation, because he wasn't there and didn't act, won't cure the problem.***

Comment: Battles is again misleading the Court on a material matter, he is lying about the facts to corrupt the Court's independent opinion.

MR. WOJCIECHOWSKI: ***Your Honor, he was involved in negotiations with Ms. Lund's attorney, Jane Wingfield, but nothing came of those negotiations, and if that's what Mr. Battles is stating, that's an accurate statement, otherwise he's totally inaccurate.***

(pause)

THE COURT: ***Well, I -- I don't see how he can say at no time during these telephone negotiations did the letter of intent executed by the two parties in December 1992 (sic), was ever considered to be a final and/or***

definite settlement agreement. I think he can state that he didn't, whether that's relevant or not, I don't know. But I think he can state that he didn't consider it but –

Comment: At that point the judge reached the legally correct conclusion, then he let's it slip through, and makes a legal error approving the "Letter of Intent" as final settlement agreement.

MR. WOJCIECHOWSKI: ***Your Honor, by reading the document it says that, so I don't understand what the confusion is. The last paragraph of the document before the signature line, states exactly that. 'That these essential terms are agreed, by the undersigned, except the items referred to in paragraph A are subject to acceptance, execution, delivery of the definitive agreement.' So, all he's stating is the fact that this agreement is not a definitive agreement, it says that.***

On pg. 65, Ln. 23

MR. WOJCIECHOWSKI: ***The conditions of closing are numbered one through five, and none of them have been met by any stretch of the imagination. And the conditions of litigation on-going after January 15th, was wide open, so to the argument that I filed a motion with the district court to restart my appeals, is perfectly all right, and it's provided by this agreement.***

Now lets go back to paragraph A on page one. That is the only part of the agreement that was executed. Ms. Lund paid $150,000 for two things, as it says, A and B under item two. The first was a request to dismiss the appeals. But since the agreement was never consummated in April - - - and January 15th came and went, and there was no agreement, after that we had a right to reopen the appeals, because that's what the paragraph about that says. And item B she got a truckload of plans, specifications, drawings, models, photographs, and the work product of that WRN did for the last eight years on this project. And the claim for that as filed with this Court, is over $10 million. So she got one heck of a lot for $150,000.

In paragraph three under A, it says that such payment shall not be construed as an admission of value of the foregoing, because that value exceeds all that by a great amount, so when Mr. Battles' says I have a $150,000 and whoopee..You know that was a pittance for what she got. And we had a perfect right to reopen the appeal after the January 15th date came and went and there was no agreement signed.

And, you know there 's no reason to continue and pretend this is a final settlement agreement.. Mr. Battles in all his papers that were filed on behalf of Ms. Lund, never uses the word letter of intent. Obviously, to disguise the fact that that's what it is, and you can't disguise facts that are there, staring you in the face, but he repeats it. It says settlement agreement, settlement agreement, settlement agreement, it's not. It's a letter of intent that was fine for - - in the time from December 20th when I signed it to January 15th, and then it expired. And the performance part of it was under A and then it was all performed. No argument on that. And after that there was no more agreement –."

Mr. Battles goes on for a few pages with more lies about the Letter of Intent.

On pg. 75, ln 1,

Mr. Wojciechowski : ***" First of all, this is not a global agreement, we never said it was as he (Battles) characterized that we did. It's an agreement only to settle the unsecured claims of the creditors. It does not purport to pay, offer consideration for any of the notes that are secured by real estate, or the ownership interest of Montevideo Country Club, Inc., in the amount of 77.44 percent. It doesn't have any of those words in there, it was never contemplated to pay for those things, it was only an agreement to settle the disputed unsecured claims before this Court."***

That was the only portion of an agreement that Lasarow had jurisdiction to enforce, he said so on the first page.

Cont'd. Ln. 11; ***"Further, the last clause that Mr. Battles referred to on page seven, these essential terms are agreed to by the undersigned, but are subject to the acceptance, execution, and delivery of a definitive agreement. That "but" is the key word. If they're not accepted, if they're not delivered, and if they're not executed there is no definitive agreement, and this agreement is terminated on January 15th. as it says.***

So, this is not an agreement, it's not even in force right now. There is no offer of purchase of the plans that Mr. Battles mentioned. He thinks that we sold the plans, and all these things under paragraph 2(b) on the first page, for $150,000. Ms. Lund wanted those things, her man Mr. Wilson called me weekly to get our plans, so he could continue with the County of Los Angeles and their approvals, and we gave him those plans – we gave him the use of those plans, the custody of those plans. We want those plans back, they're not sold, it doesn't say we sold the plans. It doesn't say we sold the ownership interest, it doesn't say we sold the notes, this is not a global agreement, Your Honor. it says what it says between the four corners of the agreement, and there's no need to make it something it isn't.

Ms. Lund would like it to mean what she's saying but that's not the case. She'd like to get a cheap deal here, and that's all that's purported. She'd trying to get away for $4 million to buy a 77 percent interest against all those claims, you know, that are worth over $50 million for four million. If that's what it said, then it should have said that in big bold letters, and I would not have signed it for $4 million."

The above is clear and convincing evidence, that what went on at that hearing was a fraud on Court, the July 1, 1992 Ordered Settlement is void and must be vacated at this time. The 9th. Cir. Crt. App. had all of the above information available for it's determination. Had the 9th. Cir. Crt. App. considered the merits it would have reached a different decision.

Petitioner had also moved the 9th Cir. Crt. App. to require that an U.S. Attorney, direct a federal grand jury investigation of these alleged crimes. The Appellate Commissioner apparently, buried and ignored that request, in violation of Title 18 USC Sect. 1503, 1510 & 1513. (See Declaration of Christopher R. Wojciechowski, pg. 13 in Appendix.)

Supreme Court's directives prohibit invasion of Petitioner's Constitutional Rights, once shown, no further showing of irreparable harm is required. Respondents clearly took away Petitioner's Constitutional rights as described above and by their three year attempt at bogus contempt shown in Companion Case. Respondents knew that there was no contempt. Yet, they used that bogus Order to obstruct justice by falsely filing papers in 9th Cir. Crt. App.; State Crt. and U.S. District Crt.

The 9th Cir. determined money damages are inadequate in either case.[Guiterez v. Muni.Ct. (9th Cir. 1988) 838 F2d 1031, 1045]. Petitioner suggests that the only damages that are adequate is to have Supreme Court make Petitioner whole by reversing Panel's Opinion, allowing this Case to proceed to a jury trial consolidated with RICO Case. Also Grant that, Relief sought in Appellant's Motion for Rule 60(b), now by the Supreme Court.

In addition, deprivation of a unique product and contract took place, with the inherent destruction of Petitioner's business and the loss of prospective good will. See [Reuters Ltd. V. United Press Int'l,Inc. (2nd Cir. 1990) 903 F2d 904, 908-909]; [Starlight Sugar, Inc. v. Soto (1st Cir. 1997) 114 F3d 330, 332]; [Petereit v. S.B. Thomas, Inc. (2nd Cir. 1995) 63 F3d 1169, 1186]; [Pascall v. Kansas City Star Co. (WD MO 1997) 441 F. Supp. 349,358]; [Tom Doherty Associates v. Saban Entertainment, Inc. (2nd Cir. 1995) 60 F3d 27,37-38].

The language used in Appellate Opinion, in Companion Case, is filled with inappropriate prejudicial statements. The alleged prejudice spilled over into Appellate Panel's Opinion when it decided this Case at the same time. It is obvious,

Appellate Panel was enraged by someone or some thing, committing legal error in both cases, instead of considering the merits. Petitioner appears as Private Attorney General pro se, pursuant to State of California law, because he cannot find a law firm to represent him against GD&C. Petitioner has paid the same filing fees attorneys are required to pay , he is entitled to equal protection under the law. But, because he is pro se, Appellate Court automatically rejected his pleadings, regardless of merits. In essence, it was a "kangaroo court" which wrote the Opinion. In the face of what was filed by Petitioner, in support of his Appeal, that Opinion is an insult to justice. (See Companion Case Appendix, "Exhibit A" list of Pleadings by Petitioner). That pattern has been consistent with the abridgment of Petitioner's property rights, depriving due process in this and Companion Case and throughout the history of these matters.

Petitioner's Writ includes request of this Court to direct 9th Cir. Crt. App. to require an investigation, or in the alternative, to have the United States Supreme Court under it's own inherent power, investigate corruption in the 9th Cir. Crt. App. The purpose of which is to investigate abuses by a group of attorneys who's sizable income is partially derived and continues to be derived from abrogating Petitioner's Constitutional guarantees, intimidation, retaliation, coupled with threats of criminal punishment, extortionate behavior, perjury, subornation of perjury, and corruption of federal and State Courts.

What has transpired is more than common law fraud. The Appellate Court should have addressed the merits of this Case and the Companion Case. A Court Officer allegedly perpetrated fraud affecting ability of Appellate Court to impartially judge case about fraud on lower court's. There is no time limit to attack such judgments, made at the Court of Appeals, in District Court and Bankruptcy Court but, the time is now for the Supreme Court to curtail such acts. If there was a procedure similar to 60(b) to review fraud on courts of appeal, Petitioner would have asked the Supreme Court to apply it.

There was no application of Rule 60(b) at 9th. Cir. Crt. App. Petitioner showed and quoted (10) ten applicable cases on the subject of; FRCP Rule 60(b) fraud on Court by attorney's; RICO violations by the illegal misuse of the Judicial System by attorney's; Tax fraud by attorney's in Bankruptcy Court fraud specifically premeditated with malice to cheat Petitioner and the American Taxpayer of what Respondents owe:

(1) The Seventh and Fourteenth Amendments; FRCivP. Rule's 60(b) going back to: United States v. Throckmorton (1878) 98 U.S. 61, a hundred and twenty one year old Supreme Court case, all hold the answer to this and the other questions posed. Throckmorton, shockingly parallels the fraud shown in the underlying Bankruptcy Court. The Appellate Opinion, at issue in Companion Case, has given "new parties" Defendants, a free "pass through" enabling them to avoid any prosecution, *res judicata.* That fact is no coincidence, it can hardly be politely called abuse of discretion, it is, in fact, premeditated fraud facilitated by a United States Crt. App. Commissioner. That is the tragedy of this incident. An elite firm of lawyers, has the power to subvert the United States Constitution, and the law of this land., while the 9th Cir. Crt. App. looks the other way trashing the Constitution and it's Doctrine of equal protection under the law.

Throckmorton, has vigilantly held through more than half of the history of the United States of America. It's unscathed survival demonstrates fraud is just that, and will always be recognized as such. The Supreme Court is bound by Throckmorton, It was an Appeal from the Circuit Court of the United States for the District of California (predecessor to the 9th Cir. Crt. App.). Throckmorton, with the other cases reviewed here, is dispositive of this Case and Companion Case. Throckmorton still says to all who can hear it's beckoning call, wrongdoing is; *"a jaded adversary"*, GD&C and Respondent's misrepresentations caused Petitioner to suffer loss of multi-million dollar investment and property and the American Taxpayers were cheated out of millions. Petitioner was made to suffer for over seven years, his rights to a jury trial have been

abused through fraud on Court. Throckmorton says to the Supreme Court and to all who will hear it's profound message:

> *"In the opinion of the court below, (now known as the 9th Cir.) it is said; 'That the alleged frauds are not such extrinsic collateral acts as would justify the interference of equity with the decrees of confirmation;' and the court mentions what it understands by such extrinsic collateral acts, to wit: 'Keeping the adversary witness from court; secreting or purloining his testimony;' or, if the citation to him be given under such circumstances as to defeat it's purpose, the court says: 'Any conduct of that kind mentioned would tend to prevent a fair trial on the merits, and thus to deprive the innocent party of his rights'. So, if a judge sit, when disqualfied from interest or consanguinity; if the litigation be collusive; if the parties be fictitious; if real parties affected are falsely stated to be before the court; the judgment recovered may be set aside, or its enforcement restrained," etc.*

(2)Rule 60(b) was designed by U.S. Congress to address mistakes attributable to special circumstances, and not merely to erroneous applications of law. The Court of Appeal, Cudahay Cir., held that: (1) District court should have treated motion as motion to alter or amend judgment rather than as motion for relief from judgment, & (2) District court should have addressed merits of argument. [Russell v. Delco Remy (1995,CA7 Ind) 51 F3d 746,67 BNA FEP Cas 673,66 CCH EPD 43512];

(3) Since language of FRCP 60 is unambiguous, judicial inquiry should be complete. Also; although fraud on court is not only permissible basis for independent action, fraud cognizable to maintain untimely independent attack upon valid and final judgment requires more than common law fraud. See [Geo. P. Reintjes Co. v. Riley Stoker Corp. (1995,DC Mass) 161 FRD2];

(4) For purposes of FRCP 60(b) provisions that judgment may be set aside for fraud upon court, one species of fraud upon court occurs when officer of court perpetrates fraud affecting ability of court or jury to impartially judge case. [Pumphrey v.

K.W. Thompson Toll Co. (1995,CA9 Idaho) 62 F3d 1128,95 CDOS 5998,95 Daily Journal DAR 10301];

(5) Judgment is void, and therefore, subject to relief under FRCP 60(b)(4), only if court lacked jurisdiction or if court's action amounts to plain usurpation of power constituting violation of due process [Hoult v. Hoult (1995, CA1 Mass) 57 F3d 1,41 Fed Rules Evid Serv 783].

(6) There is no time limit on attack on judgment as void; one-year limit applicable to some Rule 60(b) motions is expressly inapplicable to Rule 60(b)(4) motion, and even requirement that motion be made within reasonable time cannot be enforced with regard to this class of motion. [Briley v. Hidalgo (1993, CA 5 La) 981 F3d 246];

(7) FRCP 60(b)(4)], which provides relief from judgments, is not subject to any time limitation. [Hall v. Commissioner (1994,CA10) 30 F3d 1304,CCH Unemployment Ins Rep 14044B, 94-2 USTC 50392,94 TNT 145-21]; [New York Life Ins. Co. v. Brown (1996, CA5 La) 84 F3d 137].

(8) The misuse of the Judicial System has been recently proven in an exposure of lawyers and law firms to Racketeering claims. As shown here, similar misuse of the Judicial System has been recently proven in Eighth Circuit's decision in [Handeem v. Lemaire, 112, F.3d 1339 (8th. Cir. 1997)]. 9th. Cir. Crt. App. should have considered lawyers are not immune in any way from potential Racketeering liability and the Eighth Circuit's decision, vividly illustrates this. To the extent *Handeem* is similar to this case, lawyers manipulated a bankruptcy court causing fraud and conducting the affairs of an enterprise - specifically, the bankruptcy estate, through a pattern of racketeering activity. The claim essentially stressed an illegal manipulation of the judicial system, as alleged here. The importance of the *Handeem* decision is two fold and applies to the acts of GD&C alleged here and in Companion Case. In the words of the Eighth Circuit in *Handeem*, *"be mistaken for an absolute edict that an attorney who associates with an enterprise can never be liable under RICO. An attorney's license is not an invitation to engage in*

racketeering, and a lawyer no less than anyone else is bound by general applicable enactments. Neither Reves nor RICO itself exempts professionals, as a class, from the law's proscriptions, and the fact that a defendant has the good fortune to possess the title 'attorney at law' is, standing alone, completely irrelevant to the analysis dictated by the Supreme Court [in Reves]". Significantly, the *Handeem* decision found that a bankruptcy estate was a " legal entity" that "would have endured even if the slate were wiped clean of the underlying racketeering activity." The overarching framework for the *Handeem* allegations was the rule, first enunciated by the Supreme Court in it's earliest RICO decision, [United States v. Turkette, 452 U.S. 576,583, 101 S.Crt. 2524,2529, 69 L. Ed. 2d 246 (1981)].

Petitioner's Briefing and Motion made before 9th. Cir. Crt. App. in this Case and Companion Case, include the following cases on point, two of which were 9th. Circ's. very own, decided just a few months ago, 11/4/98.

(9) The gain on the distribution of appreciated property under 26 USC Sect. 311(b)(1)(2)(3) is to be determined as if the distributed property had been sold at the time of (dissolution) distribution; [Pope & Talbot, Inc. v. Commissioner of Internal Revenue (9th. Cir.1999) Daily Journal D.A.R. 214]. This law was in effect since 1985, Bankruptcy Court & GD&C's tax department, headed by Ronald E. Gother, knew about this law, but decided to violate it, defrauding the American taxpayer's in the 1992 Order in question and in the Montevideo Partnership tax return, attached as Exhibit A to Appellant's Motion, of 5-5-98 in Related Case, for Rule 60 (b) Relief & Original RICO Complaint (See Exhibit Y, Companion Case in Appendix, Fifth Cause of Action, 1st. Amended RICO Complaint); Also, Partnership is recognized as an entity separate from partners in Bankruptcy proceedings, but not in Income Taxation, See [Jennings v. C.I.R. (C.C.A. Tex 1940) 110 F2d 945, Cert. Deny. 61 S.Ct. 169 311 U.S. 704, 85 L.Ed. 457], Lasarow, a Bankruptcy Judge without jurisdiction or knowledge of tax law, was obviously incompetent to preside over a

partnership dissolution, therefore, his 1992 Order in question was void and has no effect and must be vacated by Supreme Court, since 9th. Cir. Crt. App. failed to do so.

(10) In the other recent case, 9th. Cir. held: "*A party may seek equitable relief from injunction even though underlying final judgment is related to contract action.*" [Bellevue Manor Associates et.al. v. United States Dept. of HUD, No 98-35148 (9th. Cir. 1999) Daily Journal D.A.R. 630]. The Court held that; "it was appropriate to Apply Rule 60(b)(5) to vacate not only the injunction but also the declaratory judgment in this case because, as evidenced by the injunction directly enforcing it, this declaratory judgment has prospective effect (See 12 Moore's S60.47[1][d], at 60-158). The Panel had failed to conform to existing cases on point, as shown. Panel's Opinion is plain legal error & must be reversed and Petitioner's Relief sought in Rule 60(b) Motion must be granted by Supreme Court.

The reason why the above case law was not enforced at the 9th. Cir. Crt. App., is not because the Appellate Panel was not able to do it's job, rather it was because the Appellate Commissioner, Peter L. Shaw, aided by GD&C attorney's, decided to overreach his authority, dismissing Petitioner's Motions and dismissing scheduled oral hearing. It is evident that such dismissals happened only because Petitioner's Motion was ignored and GD&C was not disqualified in May of last year. Petitioner is requesting Supreme Court to disqualify GD&C at this time. (See copy of Motion filed in 9th Cir. Crt. App., MOTION TO SUPPLEMENT EMERGENCY MOTION TO DISQUALIFY COUNSEL, pgs. 23-38 in Appendix.). Petitioner was reluctant to proceed with Rule 20, Petition for an Extraordinary Writ pursuant to 28 USCS 1651 (a). In the event, however, this Court, after review of the matters presented above and in the following arguments, considers that exceptional circumstances presented here warrant an Extraordinary Writ, because adequate relief cannot be obtained in any other form, from any other court, Petitioner will be pleased, should this Court proceed pursuant to Rule 20.

All question presented fall within the jurisdiction of this Court's review for Writ of Certiorari because questions raised pertains to 9th Cir. Crt. App. which, has; *"departed so far from accepted and usual course of judicial proceedings - - - as to call for an exercise of this Court's supervisory power"*. Jurisdiction is mandated, pursuant to Part III Rule 10(a)(c), Rules of Supreme Court of the United States, (Effective 5-1-98).

For additional Argument, See Companion Case's "ARGUMENT AS TO FIRST PART OF QUESTION; ARGUMENT AS TO SECOND PART OF QUESTION; ARGUMENT AS TO THIRD PART OF QUESTION; & ARGUMENT AS TO FOURTH PART OF QUESTION".

Now, Supreme Court must weigh the above factors to determine whether procedural safeguards were adequate to provide due process. It is clear to Petitioner that the 9th Cir. Crt. App. failed to provide any safeguards because of prejudice and corruption, depriving Petitioner of his guaranteed rights under the Seventh and Fourteenth Amendments to a jury trial.

ARGUMENT AS TO SECOND QUESTION:

The Appellate Panel, mixed up the Appellant with the Appellee, the defendants with the plaintiff. The Appellate Opinion is incomprehensible as to who is who. (See "Exhibit A", "Memorandum" filed 3/ 31/99 in Appendix to this Petition, also"Exhibit B" filed 5/12/99, "Order Denying the Petition for Rehearing and for Rehearing En Banc".) Petitioner is called Appellee, and Respondent is called Appellant in all captions, Appellate Panel's Memorandum is incomprehensible, was made in error and is reversible.

The first sentence of "Exhibit A", Memorandum referring to Footnote's 4 & 5 is also an error, because it is a generality, and not specific as to who is who. It's like the 7/1/92 Order in question referring to an undated document.

In paragraph 1. of Memorandum, Appellate Panel again concludes that; *"Wojciechowski's first amended complaint was on file in the Superior Court of the State of California for the County of Monterey, even if that complaint was fatally*

defective." There is absolutely no support in the record for such a conclusion. The case was filed in Monterey County, and removed the same day to U.S. District Court as an independent action permitted by FRCivP Rule 60 (b). There is nothing defective about that fact. Anything else implied is not "*fairly supported by the record*", there is no mystery in the record, it is crystal clear as to what happened. The Opinion, is full of prejudice and inaccurate statements, it is therefore, reversible error by Supreme Court.

The Appellate Panel then makes another unsupportable conclusion in saying; " *It appears that it was filed well beyond the statute of limitations.*" On that erroneous conclusion, Panel then makes another error saying; "*that would suggest that the dismissal was not only appropriate, but also should have been with prejudice.*" That is a totally false statement, there is no statute of limitations for the kind of fraud the removed case was seeking relief from.

Then at the end of Para 1., Appellate Panel make the following unfounded statement supported by nothing but apparent prejudice; "*Nevertheless, as to Disney Defendants and the Gother Defendants, the action should be dismissed with prejudice in any event.*" No explanation or grounds were given for that conclusion, yet Petitioner's substantial rights guaranteed by the Constitution were trashed as a favor to the famous "Disney's" and the influential and emminent law firm of Gibson Dunn & Crutcher. Patronage of the Appellate Commissioner, easily replaced equal protection under the rule of law. The Supreme Court cannot turn away from this matter, it must invoke it's <u>*supervisory power*</u> to give Petitioner what the Constitution guarantees each person in the United States.

In para. 2, Appellate Panel findings cannot be supported without contempt in Companion Case; "*In short, they should never have been made a part of this action, should be dismissed, and should not be considered in assessing venue*". If contempt is overturned by Supreme Court, this Case must be remanded for jury trial, forthwith against all Defendants, Disney's and Gother's, etc.

Panel then goes on with the following prejudicial statement; *"To consider them would allow Wojciechowski to profit from his own wrong."* What wrong did Petitioner commit? There is no foundation that Petitioner did anything wrong, he has struggled with fraud on Court at every turn, which turned into an obstruction of justice, including one at the 9th Cir. Crt. App.

Then the Appellate Panel, erroneously attempts to mar the issue of venue, with full knowledge of the RICO action being in existance and having copies of the First Amended RICO Complaint provided to them before Appellate Panel began to consider Petitioner's Appeal. The Northern District Court is where FK&S Defendants stole Petitioner's personal real property, in the Carmel Highlands. (See Appellants Reply to Opposition of FK&S Defendants/Cross Appellees, to Petition for Rehearing, pgs. 15-22 in Appendix.) In addition, Diane Disney Miller, in her capacity as an individual resides in Napa Valley, where she is a registered voter. There are at least five more Defendants who comply with RICO statutes as it defines proper jurisdiction. (See para. 4., pg 2, of First Amended RICO Complaint), which was available to Appellate Panel. In combining this Case with the RICO action, venue is proper in the Northern District of California, and the statute of limitation has not run out.

It is pathetic that Appellate Panel cannot reach a credible Opinion supported by facts and that such an Opinion is clearly not supported by law. Indeed, the Appellate Panel's Opinion is obviously "botched" and prejudiced toward the "Disney Defendants" and "Gother Defendants". As such, it is filled with legal and factual errors. It is reversible by the Supreme Court of the United States, the Court of last resort. Petitioner only wants a jury trial to take place in front of his peers. So far the trial has been through Motions in front of GD&C's peers. That is anything but *"substantial justice"*. It is a monopoly, designed to make a mockery of our judicial system for a favored few and results in "Kangaroo Court's" dating back from the 4-2-92 hearing, to the present. Only the Supreme

Court can now make available what the Constitution has guaranteed and we all cherish.

CONCLUSION:

Petitioner, prays judgment that the Supreme Court grants certiorari and reviews the suspect elements of the judgment, applying it's *supervisory power* to eliminate prejudice and corruption at the Ninth Circuit Court of Appeals, such as is described here, and that Supreme Court appreciates these most important questions on this certiorari application.

Petitioner prays judgment of the Supreme Court to use this Writ of Certiorari for what it was designed; to accomplish and fulminate, the inferior court, from a botched set of opinions made in legal error as shown here and in Companion Case.

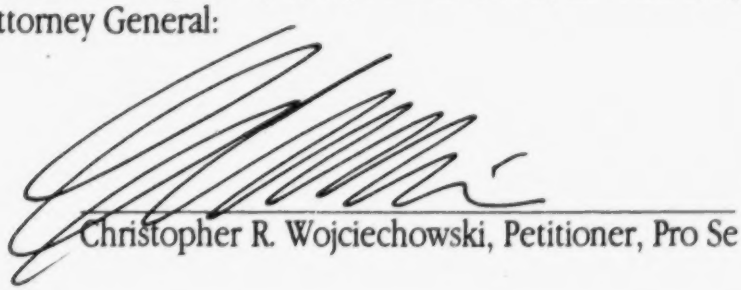
Petitioner prays judgment of the Supreme Court to disqualify the firm of Gibson Dunn & Crutcher and their attorney's from representing anyone but themselves in the matters presented here and in Companion Case.

Petitioner prays judgment of the Supreme Court to set aside the inferior courts opinion/ mandate in this Case.

Petitioner prays judgment of the Supreme Court to order a vacature of the 7/1/92 Bankruptcy Court Order, allowing RICO case and Related Case to proceed unfettered against all defendants, including those "new other parties" identified in the Order as "Disney Defendants", and "Gother Defendants" in Companion Case.

Petitioner reiterates his prayer for judgment of the Supreme Court to grant the relief sought in Rule 60(b) Motion, dismissed by Appellate Commissioner.

Submitted on June 3, 1999, Pebble Beach, California, by Private Attorney General:



Christopher R. Wojciechowski, Petitioner, Pro Se

Note # 1. Petitioner will make application for another Companion Appeal, to be joined with these Petitions for Writ of Certiorari. Petitioner will request the Supreme Court to bypass the 9th Cir. Crt. App., in the dismissal of Latham & Watkins, and their attorney's from RICO Case. That Appeal Opening Brief is due June 8, 1999. Permission will be sought, pursuant to Rule 18, to transfer that Appeal directly to Supreme Court. The Decision of the District Court involves a legally erroneous dismissal from RICO case, on Summary Judgment Motion, of the law firm, Latham & Watkins, and it's attorneys; John F. (Jack) Walker; William J. Meeske and Vincent Herron. It is absolutely imperative to the preservation of Petitioner's Constitutional due process rights, guaranteed by the Seventh & Fourteenth Amendments, to have the above parties reinstated in this RICO action, forthwith.